WEE CHOO KEONG A

v.

KETUA PENGARAH PERKHIDMATAN AWAM MALAYSIA B

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
LIM YEE LAN JCA
MOHAMAD ARIFF YUSOF JCA
[CIVIL APPEAL NO: W-02-423-2010] C
16 JUNE 2014

ADMINISTRATIVE LAW: *Exercise of administrative powers - Judicial review - Application for - Whether Member of Parliament entitled to pension after being found guilty for contempt of court - Whether disqualification under art. 48(1)(e) of Federal Constitution applicable to contempt proceedings of civil nature* D

CIVIL PROCEDURE: *Government proceedings - Limitation - Claim by Member of Parliament for pension - Claim filed four years and two months after non-payment of pension - Calculation of 36 months limitation - Whether to be calculated from date of retirement age - Whether claim statute barred - Public Authorities Protection Act 1948, s. 2(a)* E

The appellant, in an appeal in a judicial review application under O. 53 of the Rules of the High Court 1980 raised an issue of constitutional law concerning the entitlement of a Member of Parliament to gratuity and pension upon retirement pursuant to Members of Parliament (Remuneration) Act 1980 ('MPRA'). The appellant was disqualified from being a Member of Parliament pursuant to art. 48(1)(e) of the Federal Constitution ('Constitution') upon being convicted for contempt of court for evading service of an injunction. The appellant was sentenced to imprisonment for two years for breach of the injunction and another two years for evasion of service. On appeal to the Federal Court, the imprisonment sentence was set aside but a fine of RM7,000 was imposed for the offence of contempt of court. The appellant finally succeeded in setting aside the *ex parte* injunction and had the suit on which the *ex parte* injunction was based struck out in April and June 2007, which was after the appellant attained the age of 50 on 26 June 2003. The appellant was not paid pension when he turned 50, but received his gratuity. The F G H I

A appellant wrote several letters to the respondents on his pension entitlements. On 21 September 2007, a letter was sent from the Pension Department to the appellant informing him that his pension could not be paid because of the conviction for the contempt of court and the fine imposed by the Federal Court. B The High Court Judge ('HCJ') who heard the judicial review application held that the disqualification under art. 48(1)(e) did not apply to contempt proceedings of a civil nature, but nevertheless the HCJ dismissed the application on the ground that the application was statute barred under s. 2(a) of the Public C Authorities Protection Act 1948 ('PAPA') because the appellant had attained his pensionable age of 50 on 26 June 2003, but the judicial review application was filed only on 30 October 2007. Hence, the appeal. The issues that arose for determination *inter alia* were (i) whether for purposes of calculating the 36 months of D limitation under PAPA, the period should run from the date of the letter from the Pension Department *ie*, 21 September 2007 or the date when the appellant attained the age of 50 years on 26 June 2003 *ie*, the date when the appellant should have been paid his gratuity and pension under MPRA; and (ii) whether disqualification E under art. 48(1)(e) included a civil contemnor.

Held (allowing appeal with costs)
Per Mohamad Ariff Yusof JCA delivering the judgment of the court:

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(1) If the appellant was entitled to gratuity despite the conviction for civil contempt, the appellant should likewise be entitled to his pension. It could not be right to now defeat the claim for the pension by a sterile reliance on limitation. In any event, the facts showed a situation of a continuing injury, *ie*, a G continuing denial of the appellant's pension entitlement since 20 June 2003. The 36 months bar had to be calculated not only 'next after the act, neglect or default complained of', but 'in the case of a continuance of injury or damage, within 36 months next after the ceasing thereof'. (para 17)

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(2) There was no unreasonable delay in filing the judicial review application since the appellant had to exhaust his legal avenues in the form of the appeal, and ultimately the successful setting aside of the injunction order, followed by I the striking out of the suit which was the foundation of the

order in the first place. It would be unfair to penalise the appellant for breach of an order which was subsequently proven to be incorrect in law. (para 18)

(3) A person convicted of civil contempt and is sentenced could not avail himself of a free pardon, and therefore, the provision of art. 48(1)(e) of the Constitution could not be reasonably interpreted to include a civil contemnor. The approach adopted by the High Court in addressing art. 48(1)(e) of the Constitution was correct, but had misdirected itself when it came to the consideration of the issue of limitation under s. 2(a) of the PAPA. (paras 19 & 21)

(4) The High Court had failed to properly evaluate and consider the inaction of the respondent in corresponding with the appellant, the reasonable steps taken by the appellant to exhaust his legal avenues before filing the judicial review application and the nature of the injury caused to the appellant *ie*, the continuing deprivation of the pension. Therefore, the HCJ should have calculated the limitation period of 36 months from the date of the letter written by the Pension Department dated 21 September 2007. (para 21)

Bahasa Malaysia *Translation Of Headnotes*

Pemohon, dalam rayuan permohonan semakan kehakiman di bawah A. 53 Kaedah-Kaedah Mahkamah Tinggi 1980, telah menimbulkan persoalan undang-undang perlembagaan mengenai hak seorang Ahli Parlimen kepada ganjaran dan pencen setelah bersara menurut Akta Ahli Parlimen (Saraan) 1980 ('AAPS'). Perayu telah hilang kelayakan untuk menjadi Ahli Parlimen mengikut per. 48(1)(e) Perlembagaan Persekutuan ('Perlembagaan') apabila didapati bersalah menghina mahkamah kerana mengelak penyerahan injunksi. Perayu telah dihukum penjara selama dua tahun kerana melanggar perintah injunksi dan dua tahun lagi bagi mengelak penyerahan injunksi. Atas rayuan kepada Mahkamah Persekutuan, hukuman penjara telah diketepikan tetapi denda sebanyak RM7,000 telah dikenakan untuk kesalahan menghina mahkamah. Perayu akhirnya berjaya mengenepikan perintah injunksi *ex parte* dan memperolehi pembatalan guaman yang menjadi asas kepada perintah injunksi *ex parte* pada bulan April dan Jun 2007, iaitu setelah perayu mencapai umur 50 pada 26 Jun 2003. Perayu tidak dibayar pencen apabila mencapai umur 50 tahun, tetapi menerima ganjarannya. Perayu

telah menulis beberapa surat kepada responden berkenaan hak pencennya. Pada 21 September 2007, sepucuk surat telah dihantar oleh Bahagian Pencen kepada perayu yang menyatakan bahawa pencen perayu tidak akan dibayar kerana perayu telah disabitkan atas kesalahan menghina mahkamah dan denda telah pun dikenakan oleh Mahkamah Persekutuan. Hakim Mahkamah Tinggi ('HMT') yang mendengar permohonan semakan kehakiman telah memutuskan bahawa ketidaklayakan di bawah per. 48(1)(e) adalah tidak terpakai kepada prosiding penghinaan yang bersifat sivil, namun HMT telah menolak permohonan tersebut atas alasan bahawa permohonan tersebut telah dihadkan masa bawah s. 2(a) Akta Perlindungan Pihak Berkuasa Awam 1948 ('APPBA') kerana perayu telah mencapai usia persaraan iaitu 50 tahun pada 26 Jun 2003, tetapi permohonan semakan kehakiman tersebut hanya difailkan pada 30 Oktober 2007. Oleh itu, rayuan ini. Isu-isu yang dibangkitkan untuk penentuan, antara lain, adalah (i) sama ada pengiraan 36 bulan untuk tujuan pengiraan had masa bawah APPBA, tempoh yang harus dikira adalah dari tarikh surat daripada Bahagian Pencen iaitu 21 September 2007 atau dari tarikh di mana pemohon telah mencapai umur 50 tahun pada 26 Jun 2003 iaitu tarikh apabila perayu sepatutnya dibayar ganjaran dan pencen di bawah AAPS; dan (ii) sama ada ketidaklayakan di bawah per. 48(1)(e) Perlembagaan merangkumi penghina sivil.

Diputuskan (membenarkan rayuan dengan kos)

Oleh Mohamad Ariff Yusof HMR menyampaikan penghakiman mahkamah:

(1) Jika perayu berhak kepada ganjaran walaupun disabitkan untuk penghinaan sivil, perayu harus berhak mendapat pencen. Adalah tidak wajar untuk menyangkal tuntutan pencen bergantung kepada alasan had masa. Dalam apa jua keadaan, fakta-fakta menunjukkan situasi kecederaan yang berterusan, iaitu, penafian berterusan hak pencen perayu sejak 20 Jun 2003. Had masa 36 bulan harus dikira bukan hanya 'selepas tindakan, kecuaian atau kemungkiran yang diadukan itu' tetapi 'dalam kes kecederaan atau kerosakan yang berterusan, dalam tempoh 36 bulan selepas ianya berhenti'.

(2) Tiada kelewatan tidak munasabah dalam pemfailan permohonan semakan kehakiman kerana perayu terpaksa memanfaatkan peluang yang ada dalam bentuk rayuan, dan akhirnya berjaya mengenepikan perintah injunksi, diikuti dengan pengenepian

guaman yang menjadi dasar perintah tersebut. Adalah tidak adil untuk menghukum perayu kerana melanggar perintah yang kemudiannya terbukti tidak sah di sisi undang-undang.

(3) Seseorang yang disabitkan atas penghinaan sivil dan dihukum tidak dapat memerima pengampunan, dan oleh itu, peruntukan per. 48(1)(e) Perlembagaan tidak dapat ditafsirkan untuk merangkumi penghina sivil. Pendekatan yang digunakan oleh Mahkamah Tinggi dalam pendekatan per. 48(1)(e) Perlembagaan adalah betul, tetapi ia telah terkhilaf dalam pertimbangan isu had masa di bawah s. 2(a) APPBA.

(4) Mahkamah Tinggi telah gagal menilai dan mempertimbangkan kegagalan responden untuk bertindak, langkah-langkah yang wajar diambil oleh perayu untuk memanfaatkan peluang yang ada sebelum memfailkan permohonan semakan kehakiman dan jenis kecederaan yang disebabkan kepada perayu iaitu penafian pencen yang berterusan. Oleh itu, HMT sepatutnya mengira tempoh had 36 bulan dari tarikh surat bertarikh 21 September 2007 yang ditulis oleh Bahagian Pencen.

Case(s) referred to:
Fan Yew Teng v. Setia Usaha, Dewan Ra'ayat & Ors [1975] 1 LNS 39 HC ***(refd)***
JB Jeyaretnam v. The Attorney-General [1990] 2 CLJ 477; [1990] 3 CLJ (Rep) 643 HC ***(refd)***
Michael Ben Panggi v. PP [1978] 1 LNS 122 HC ***(refd)***
Tasja Sdn Bhd v. Golden Approach Sdn Bhd [2011] 3 CLJ 751 FC ***(refd)***

Legislation referred to:
Federal Constitution, art. 48(1)(e)
Public Authorities Protection Act 1948, s. 2(a)
Rules of the High Court 1980, O. 18 r. 19(1)(a), O. 53

Representation of the People Act 1981 [UK], s. 1

Other source(s) referred to:
Borrie & Lowe, *The Law of Contempt*, 3rd edn, 1996, pp 655 & 662

For the appellant - In person
For the respondent - Shamsul Bolhassan; SFC

[Editor's note: For the High Court judgment, please see Wee Choo Keong v. Ketua Pengarah Perkhidmatan Awam, Malaysia [2011] 3 CLJ 331.]

Reported by Sandra Gabriel

A

JUDGMENT

Mohamad Ariff Yusof JCA:

Introduction

B **[1]** This was an appeal in a judicial review application under O. 53 of the Rules of the High Court 1980. The appeal by the applicant, Wee Choo Keong, raised a short issue of constitutional law concerning the entitlement of a member of Parliament to his gratuity and pension upon retirement after he was charged and C convicted of contempt of court for basically evading service of an injunction against him. By a significant twist of events, the suit which formed the basis for the contempt proceedings against him was subsequently struck out and the order for the injunction set aside. The relevant background facts are examined in greater detail D in a separate section of this judgment.

[2] Under art. 48(1)(e) of the Federal Constitution, a person is disqualified from being a member of either House of Parliament if he has been convicted of "an offence by a court of law in the E Federation" and sentenced to imprisonment for a term of not less than one year, or to a fine of not less than two thousand ringgit and has not received a free pardon. As for the entitlement to gratuity and pension, the applicable law is laid down in the Members of Parliament (Remuneration) Act 1980 ('MPRA'). F Paragraph 14, First Schedule of the MPRA provides:

> (1) No pension or gratuity shall be granted under the Schedule to any person who has become disqualified from being a member of either House of Parliament under circumstances described in paragraph (e) or (f) of Clause (1) of Article 48 of the G Constitution.
>
> (2) If any person to whom a pension has been granted under the Schedule has become disqualified from being a member of either House of Parliament under circumstances described in subparagraph (1), the pension shall forthwith cease:
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> H
>
> > Provided that the pension shall be restored with retrospective effect in the case of a person whose disqualification under paragraph (e) of Clause (1) of Article 48 of the Constitution is removed by the Yang di-Pertuan Agong.
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> I

The High Court Decision

[3] The learned High Court Judge who heard the judicial review application in fact held that the disqualification under art. 48(1)(e) did not apply to contempt proceedings of a civil nature, but nevertheless dismissed the application on another ground, namely, the application was statute-barred under s. 2(a) of the Public Authorities Protection Act 1948 ('PAPA'), which provides, *inter alia*, that any suit, action or proceeding against any person "for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority" must be commenced within 36 months "next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within 36 months next after the ceasing thereof." There was no dispute that s. 2(a) applied to a decision taken under MPRA.

[4] The appellant attained his pensionable age of 50 on 26 June 2003, but the judicial review application was filed only on 30 October 2007. The learned judge of the High Court held that the applicant "had slept on its rights and the cause of action had lapsed on 26 June 2006".

[5] In relation to the applicability of art. 48(1)(e), however, the learned High Court Judge clearly held that it did not apply to contempt proceedings in a civil court. See para. 60 of the judgment, reading:

> In the context of Article 48(1)(e) of the Federal Constitution, I think the phrase "he has been convicted of an offence by a court of law" refers to a person who has been convicted of an offence by a Criminal Court and does not include a person who has been found guilty for contempt of court by a Civil Court. This holding is also consistent with the definition of "convicted" or "conviction" given by other statutes ...

Our Decision

[6] We allowed the applicant's appeal by a unanimous decision with costs of RM5,000 to be paid by the respondent. We agreed with the learned judge's decision that art. 48(1)(e) of the Federal Constitution did not apply to a conviction for contempt for breach of a court order in a civil court, but disagreed with the conclusion that the applicant's claim was statute-barred. The order of the

A High Court was set aside and we granted the orders of *certiorari* and *mandamus* as prayed in the applicant's substantive application for judicial review, namely, (a) an order of *certiorari* to quash the whole decision of the respondent as contained in the respondent's letter of 21 September 2007, and (b) an order of *mandamus* to
B order the respondent to pay the applicant all pensions after the applicant attained the age of 50 years old (ie, 26 June 2003) as provided under the Members of Parliament (Remuneration) Act 1980 (Act 237), with interest at 8% per annum from 26 June 2003 until realisation.

C

The Material Facts

[7] The material facts were analysed in detail by the learned judge in his judgment. It is not necessary to repeat all the facts here. For purposes of the appeal, it is only relevant to underline
D some key facts. These are enumerated below:

(i) The applicant was elected as a Member of Parliament for the Parliamentary constituency of Bukit Bintang from 21 January 1990 to 6 April 1995.

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(ii) He was re-elected as a Member of Parliament for the same constituency for a second term on 21 April 1995.

(iii) During the currency of his first term as a Member of
F Parliament, a suit was filed against him and two other defendants on 9 February 1993 by companies in the MBf group for alleged conspiracy to injure these companies.

(iv) The MBf companies obtained an *ex parte* injunction against him and the other defendants on 9 December 1993.

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(v) Arising from the breach of the *ex parte* injunction and evasion of service thereof, contempt proceedings were commenced against the applicant resulting in him being found liable for contempt and sentenced to be committed to prison for two
H years for breach of the injunction and another two years for evasion of service.

(vi) The applicant appealed to the Supreme Court. On 14 April 1995, the Supreme Court allowed his appeal on the alleged
I breach of the court order and set aside the jail sentence but, by a majority decision, found the applicant in contempt of court for evasion of service of the injunction. The Supreme Court imposed a fine of RM7,000.

(vii) The applicant thereafter found himself disqualified to hold office as a Member of Parliament in an election petition filed by the candidate who lost in the election for the Bukit Bintang constituency. A fresh by-election was not called but the election judge declared the losing candidate as the properly elected candidate for the constituency.

(viii) There was an earlier application filed by the applicant to set aside the *ex parte* injunction and to strike out the suit by the MBf companies. This application to set aside the injunction was heard and dismissed by the High Court on 6 August 1996.

(ix) The applicant appealed against this judgment.

(x) On 20 June 2003, the applicant reached the age of 50 years.

(xi) On 20 April 2007, the appeal by the applicant on the setting aside of the injunction was heard by the Court of Appeal. The Court of Appeal unanimously allowed his appeal. The *ex parte* injunction order was set aside by the unanimous decision of the Court of Appeal.

(xii) On 20 June 2007, the High Court struck out the suit by the MBf companies under O. 18 r. 19(1)(a) of the Rules of the High Court 1980.

[8] The foregoing are the bare basic facts. But for the contempt proceedings and the decision of the Supreme Court imposing the fine of RM7,000 on him for evasion of service of the *ex parte* injunction order, and the consequent decision in the election petition, the applicant would have remained as a Member of Parliament for Bukit Bintang for the second term. As the above sequence will show, the applicant finally succeeded in setting aside the *ex parte* injunction and had the suit on which the *ex parte* injunction was based struck out only in April and June 2007, namely, after he had attained 50 years old. He was not paid his pension when he turned 50, but interestingly he received his gratuity.

[9] It appeared from the record that there was no correspondence from the respondent to him on his pension entitlement until he wrote letters to inquire about it after he had exhausted his appeal to the Court of Appeal and the striking out

application in the High Court. The first letter he wrote was on 7 August 2007, soon after the suit was struck out. This letter was addressed to "Pengarah, Bahagian Pencen", and it read in its material parts:

> Tuan,
>
> PENCEN UNTUK AHLI PARLIMEN
>
> Dengan hormatnya saya merujuk kepada perkara di atas.
>
> Adalah dimaklumkan bahawa saya telah terpilih sebagai Ahli Parlimen untuk kawasan Bukit Bintang pada 1990 sehingga 1995. Saya sekarang telah berusia 54 tahun dan saya percaya bahawa saya layak menerima pencen.
> Adalah sangat dihargai sekiranya tuan dapat meneliti perkara ini agar saya dapat menerima pencen saya dengan segera ...

[10] It will be noted from the contents of this letter that the applicant claimed his pension entitlement on the basis on his first term tenure as a Member of Parliament. This was consistent with para. 2(1), First Schedule, of the MPRA, which required "thirty six months of reckonable service." There was again no dispute that para. 2(1) applied. The dispute turned on the effect of the alleged disqualification mentioned earlier. There was no immediate reply to this letter.

[11] The record disclosed another letter was sent by the applicant on 5 September 2007, and yet another on 21 September 2007. The letter of 21 September 2007 was trenchant in tone and the applicant made known his dissatisfaction on the absence of a reply after 16 days and referred in general to, *inter alia*, "the attitude of the staff (in the Bahagian Pencen) as the most unacceptable and disgraceful whereby they do not have the decency to acknowledge receipt of a letter from former Member of Parliament ...".

[12] The record nevertheless showed there was a reply carrying the same date, ie, 21 September 2007, from the bahagian pencen, which was couched in an apologetic manner and referring to the earlier letter of 7 August 2007. It said, *inter alia*:

> Tuan,
>
> PEMBAYARAN PENCEN UNTUK AHLI PARLIMEN
>
> Dengan segala hormatnya saya diarah merujuk kepada surat tuan bertarikh 7 Ogos 2007 mengenai perkara di atas.

2. Seperti mana tuan sedia maklum, tuan mula menjadi Ahli Parlimen, Bukit Bintang dari 21 Oktober 1990 sehingga 5 April 1995. Kedudukan ini melayakkan tuan untuk menerima ganjaran dan pencen apabila Parlimen dibubarkan pada 6 April 1995. Malah tuan telah pun dibayar ganjaran sebanyak RM63,600 ... Namun begitu, mengikut peruntukan perenggan 2(1) Jadual Pertama Akta Ahli Parlimen (Akta 237):

> Seseorang yang berhenti menjadi Ahli atau Anggota boleh diberi pencen jika dia telah menyempurnakan 36 bulan perkhidmatan yang boleh dimasukira:
>
> > Dengan syarat bahawa jika seseorang Ahli atau Anggota untuk pertama kalinya pada atau selepas 1hb Julai 1990 berhenti menjadi Ahli atau Anggota apabila menyempurnakan tiga puluh enam bulan perkhidmatan yang boleh dimasukira tetapi belum mencapai umur lima puluh tahun pada tarikh dia berhenti menjadi Ahli atau Anggota, dia boleh diberi pencen hanya apabila dia kemudiannya mencapai umur lima puluh tahun.

Dengan itu, pencen tuan hanya boleh dibayar apabila mencapai umur 50 tahun iaitu pada 26 Jun 2003.

3. Walau bagaimanapun, Mahkamah Persekutuan pada 14 April 1995 telah mensabit kesalahan dan menjatuhkan hukuman denda sebanyak RM7,000.00 atas kesalahan tuan menghina Mahkamah. Perkara ini telah mengakibatkan tuan hilang kelayakan untuk menerima pencen sepertimana yang telah diperuntukkan di bawah ... [reference was made to paragraph 14, First Schedule MPRA and Article 48 of the Federal Constitution] ...

4. Memandangkan sehingga kini Jabatan ini masih belum dimaklumkan mengenai apa-apa penghapusan hilang kelayakan tuan bagi maksud perenggan 14(2) Jadual Pertama kepada Akta Ahli Parlimen (Akta 237), maka Jabatan ini tidak dapat membayar kepada tuan pencen bulanan. Keputusan ini sepatutnya dimaklumkan kepada tuan ketika dijatuhkan hukuman atau mencapai umur 50 tahun iaitu pada 26 Jun 2003 yang lalu. Namun begitu, Jabatan ini gagal untuk berbuat demikian dan ingin memohon maaf di atas kekhilafan ini. Sebarang kesulitan yang timbul berkaitan dengan masalah ini amat dikesali ...

[13] This letter from bahagian pencen was noteworthy in its acknowledgement, and apology, that the applicant should have been informed earlier that his pension could not be paid because of the conviction for the contempt of court and the fine imposed by the Federal Court on 14 April 1995, and the bahagian pencen had yet to be informed of any removal (the letter referred to "penghapusan") of the disqualification.

The Issues

[14] Against these salient, material facts, the issues became (a) whether for purposes of calculating the 36 months for purposes of limitation under PAPA, the period should run from the date of this letter or the date when the applicant attained 50 years old, ie, the date when he should have been paid his gratuity and pension under MPRA; and (b) whether bahagian pencen was correct in law to conclude that the applicant was disqualified by reason of being convicted and fined beyond the threshold of "not less than two thousand ringgit and has not received a free pardon" for contempt of court in a civil court.

Analysis

Limitation

[15] The applicant/appellant, who is an advocate and solicitor, appeared in person to argue the appeal. He argued forcefully how the bahagian pencen had not even written to him all this while since 2003 until he had to write to them to inquire after exhausting his avenues of appeal and striking out the suit by the MBf companies. The appellant drew our attention to para. 4 of the letter from the bahagian pencen to impress upon us that the department had admitted they "had not done their job" and had not communicated with him. The argument on limitation, moreover, according to the appellant's submission, was never raised in any of the respondent's affidavits filed in the judicial review application. This, however, was a relatively minor point since a s. 2(a) of the PAPA limitation issue need not be expressly pleaded (*Tasja Sdn Bhd v. Golden Approach Sdn Bhd* [2011] 3 CLJ 751). The more fundamental issue was whether s. 2(a) applied, or could be made to apply at all, in the sense advanced by the respondent.

[16] The appellant highlighted the important and jarring fact that he had been paid his gratuity. This fact was even acknowledged in the letter from the bahagian pencen. The irony of the situation was not lost on us, since the disqualification, if it existed, would apply equally to entitlements to pension and gratuity. For emphasis, the relevant legal provision, para. 14, First Schedule of the MPRA, earlier referred to, bears repeating:

> (1) No pension **or gratuity** shall be granted under the Schedule to any person who has become disqualified from being a member

of either House of Parliament under circumstances described in paragraph (e) or (f) of Clause (1) of Article 48 of the Constitution. (emphasis added)

[17] The position taken by the respondent was, to our mind, inconsistent and untenable. The point is a short one: if he was entitled to gratuity despite the conviction for civil contempt, surely he should likewise be entitled to his pension. It could not be right to now defeat the claim for the pension by a sterile reliance on limitation. This was legal positivism most displaced, and a shade irrational. In any event, even the limitation argument had its flaws, for the facts here showed a situation of a continuing injury, ie, a continuing denial of the appellant's pension entitlement since 20 June 2003. The thirty six months bar had to be calculated not only "next after the act, neglect or default complained of", but "in the case of a continuance of injury or damage, within 36 months next after the ceasing thereof".

[18] In our view, the appellant was correct in urging us to calculate the period of limitation from the date of the 21 September 2007 letter from the bahagian pencen. As far as the appellant was concerned, we did not find any unreasonable delay on his part in filing the judicial review application since he had to exhaust his legal avenues in the form of the appeal, and ultimately the successful setting aside of the injunction order, followed by the striking out of the suit which was the foundation of the order in the first place. It would seem unfair to now penalise him for breach of an order, or even evasion of an order, which was subsequently proven to be incorrect in law.

Civil Contempt And art. 48(1)(e)

[19] As regards the decision of the High Court on whether art. 48(1)(e) applied to civil contempt, we were in agreement with the views of the learned judge, who had analysed comprehensively the comparative case authorities and the context of that constitutional provision. We agree that given the context and the wording of this constitutional provision, it must be limited to a conviction for a criminal offence, since the removal of disqualification contemplates a situation where a free pardon could be received from the Yang di-Pertuan Agong. It was obvious that a person convicted of civil contempt and sentenced could not avail himself of a free pardon, and therefore by parity of reasoning, the provision could not be reasonably interpreted as including a civil contemnor. The learned judge very aptly referred to the

several cases decided locally and in Singapore where this issue of disqualification of an elected representative was decided. All dealt with convictions after a criminal trial. We refer here to the cases cited in the judgment such as *Fan Yew Teng v. Setia Usaha, Dewan Ra'ayat & Ors* [1975] 1 LNS 39; [1975] 2 MLJ 40, *Michael Ben Panggi v. PP* [1978] 1 LNS 122; [1979] 2 MLJ 65 and *JB Jeyaretnam v. The Attorney-General* [1990] 2 CLJ 477; [1990] 3 CLJ (Rep) 643; [1990] 3 MLJ 211. To buttress the point even further, a look at the English position will be useful. Borrie & Lowe, *The Law of Contempt* (3rd edn. 1996), in referring to s. 1 of the Representation of the People Act 1981 of the UK, which incorporates a similar phraseology as our art. 48(1)(e), although in a broader context, limits its application to criminal contempt. See the following commentary at p. 662 of the text:

> Under s. 1 of the Representation of the People Act 1981:
>
> > A person found guilty of one or more offences ... and sentenced or ordered to be imprisoned or detained ... for more than one year, shall be disqualified for membership of the House of Commons while detained anywhere in the British Islands or the Republic of Ireland in pursuance of the sentence or order while unlawfully at large at a time when he would otherwise be so detained.
>
> This would appear to apply to criminal but not civil contempt since the Act only applies to those found guilty of an offence.

[20] On the facts of this present case, the contempt committed was more in the nature of a civil contempt, since the purpose of the court order was to compel compliance for the benefit of a private party (the MBf companies). The offence was not essentially of a "public" nature. See also the commentary in Borrie & Lowe, *The Law of Contempt*, *supra*, at p. 655:

> In broad terms it is easy enough to distinguish criminal contempt from civil contempt. Criminal contempt are essentially offences of a public nature comprising publications or acts which interfere with the due course of justice as, for example, by tending to jeopardise the fair hearing of a trial or by tending to deter or frighten witnesses or by interrupting court proceedings or by tending to impair public confidence in the authority or integrity of the administration of justice. Civil contempt, on the other hand, are committed by disobeying court judgments or orders either to do or abstain from doing particular acts ... Civil contempt are therefore essentially 'offences' of a private nature since they deprive a party of the benefit for which the order is sought ...

Conclusion

[21] The appeal brought to the fore an issue of interpretation of art. 48(1)(e) of the Federal Constitution, overlaid with a subsidiary issue of limitation under PAPA, in the context of pension rights of a Member of Parliament. It called for a proper, reasonable, purposive and contextual interpretation of the legal provisions. We found that the approach adopted by the High Court in addressing art. 48(1)(e) of the Federal Constitution was correct, but found a misdirection when it came to the consideration of the issue of limitation under s. 2(a) of the PAPA. The High Court had failed to properly evaluate and consider the jarring inconsistency in the stand taken by the respondent, the inaction in corresponding with the appellant, the reasonable steps taken by the appellant to exhaust his legal avenues before filing the judicial review application, and most importantly, the nature of the injury caused to the plaintiff (the continuing deprivation of the pension, though not the gratuity), all of which were factors which should have compelled the learned judge to calculate the limitation period of 36 months from the date of the letter written by the bahagian pencen dated 21 September 2007.

[22] For these reasons, we allowed the appeal by a unanimous decision with costs of RM5,000 to be paid by the respondent and set aside the order of the High Court. We consequently ordered that the orders of *certiorari* and *mandamus* as prayed in the applicant's substantive application for judicial review be granted, namely, (a) an order of *certiorari* to quash the whole decision of the respondent as contained in the respondent's letter of 21 September 2007, and (b) an order of *mandamus* to order the respondent to pay the applicant all pensions after the applicant attained the age of 50 years old (ie, 26 June 2003) as provided under the Members of Parliament (Remuneration) Act 1980 (Act 237) with interest at 8% per annum from 26 June 2003 until realisation.